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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

TUAN C. TRANG,

Defendant and Appellant.

D048423

(Super. Ct. No. SCD193637)

APPEAL from a judgment of the Superior Court of San Diego County, Janet I. Kintner, Judge. Affirmed with directions.

Tuan C. Trang was found guilty of receiving stolen property and possession of a forged check. It was found true he had suffered three prior terms of imprisonment within the meaning of Penal Code<sup>1</sup> section 667.5, subdivision (b). Trang was sentenced to a term of five years. He appeals, arguing error in the manner the offenses were charged, in the admission of evidence, in the omission of instructions and in sentencing.

## FACTS

### *A. Prosecution Case*

On September 13, 2006, Jeff Goodall, Jr.'s, truck was burglarized. Among other items taken were Goodall's checkbook and a check to him from his father in the amount of \$1,000.

Later that day, a police detective searched appellant as part of an unrelated matter and found three checks in his wallet. One, taken from Goodall's checkbook, was made payable to appellant in the amount of \$125 (the \$125 check). The signature on the check was similar to that of Goodall's father. The second was the \$1,000 check (the \$1,000 check) from Goodall's father taken during the burglary of the truck. A third check in the amount of \$432 was made payable to appellant and was on the account of R. H. Fitch (the Fitch check).

Appellant stated a friend gave him the checks earlier in the day and admitted he knew the checks were stolen. Appellant at first said he was not going to cash the checks because he knew the bank would not let him. He later stated he wrote his name on the checks so in case of an emergency he could try to cash them. Goodall did not know appellant.

### *B. Defense Case*

Appellant offered no evidence. Defense counsel argued as to the receiving stolen property charge, it had not been proved beyond a reasonable doubt appellant received the

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

\$1,000 check knowing it was stolen. As to the forged \$125 check count, counsel argued appellant possessed it but without the intent to defraud.

## DISCUSSION

### A. *Charging*

Appellant argues the prosecutor should not have been allowed to charge and convict him of both receiving stolen property and possession of a forged item because both offenses arose from the same act, i.e., the single taking of property from Goodall's truck.

"In general, a person may be *convicted* of, although not *punished* for, more than one crime arising out of the same act or course of conduct. 'In California, a single act or course of conduct by a defendant can lead to convictions 'of *any number* of the offenses charged.'" (*People v. Reed* (2006) 38 Cal.4th 1224, 1226.)

The evidence demonstrated appellant committed two different crimes. First, he received the checks knowing they were stolen and, thus, committed the crime of receiving stolen property (§ 496, subd. (a)). Second, he either received a forged check or received and then altered and possessed a forged check with the intent to defraud (§ 475, subd. (a)). Appellant was properly charged with and convicted of both offenses.

### B. *Admission of the R. H. Fitch Check*

Appellant argues the trial court erred in admitting into evidence the Fitch check. Appellant was not charged with a crime based on his possession of that check and he argues its admission was improper because irrelevant and because its admission was more prejudicial than probative. The prosecutor argued the check was admissible as

additional evidence of appellant's intent to defraud. It is unclear exactly why the trial court admitted it.

Whether or not the check was properly admitted, appellant has failed to show its admission in any way affected the outcome of the case. Except to note it was found on appellant's person, there was little evidence presented concerning the Fitch check and no mention of it during argument to the jury. The evidence of appellant's possession of the Goodall checks and his admissions concerning them was very strong evidence of his guilt. Even assuming the Fitch check was improperly admitted, any error was harmless because it could not have affected the outcome of the case. (See *People v. Watson* (1956) 46 Cal.2d 818, 836.)

### *C. Instruction on Receiving Stolen Property*

Appellant makes two related arguments concerning instruction on receiving stolen property.

First, appellant notes the jury was instructed the forgery count was based on his possession of Goodall's check made payable to appellant in the amount of \$125.

Appellant observes, however, no similar instruction was given as to the receiving stolen property count, i.e., no instruction was given the count was based on his receiving the \$1,000 check taken during the burglary of the truck. Appellant argues that without such an instruction, the jury may have convicted him of receiving stolen property based not on his possession of the \$1,000 check but on his possession of the forged \$125 check or the Fitch check.

Appellant next argues because his conviction for receiving stolen property could have been based on his possession of the \$1,000 check or the forged \$125 check or the Fitch check, the trial court erred in failing to instruct the jury it was required to agree unanimously on the stolen item appellant received.

While an instruction specifying the item on which the prosecutor based the receiving stolen property count or a unanimity instruction might have been useful, their omission did not harm appellant. The prosecutor began her argument by telling the jury the receiving stolen property count referred to appellant's possession of the \$1,000 check taken during the vehicular burglary. After briefly discussing that count, the prosecutor told the jury the forgery count referred to appellant's possession of the \$125 check on Goodall's account made payable to appellant.

In her argument, defense counsel agreed the receiving stolen property count referred to the \$1,000 check and the forgery count referred to the \$125 check.

This was a very simple case tried in a very short period of time. Both parties agreed and made clear to the jury the receiving stolen property charge was based on appellant's possession of the \$1,000 check and the forgery charge was based on his possession of the \$125 check. This was a logical division of the items and counts and would undoubtedly have been understood by the jury even if counsel had not made it clear. The omission of an instruction concerning the item on which the receiving stolen property count was based or concerning the requirement for unanimity, if error, was harmless.

#### *D. Double Punishment*

Appellant argues the trial court violated the double punishment prohibition of section 654 when it imposed a term of two years on count 1, receiving stolen property, and a concurrent term of two years on count 2, forgery. Appellant argues both crimes were incident to a single objective and that the trial court was required to stay imposition of sentence on count 2.

Penal Code section 654 states an act punishable in different ways by different provisions of the Penal Code may be punished under only one such provision. The section, however, applies not only to a single act violating multiple provisions of the code but also to an indivisible course of conduct violating several statutes. Whether a course of conduct is indivisible for purposes of section 654 depends on the intent and objective of the defendant. If all the criminal acts were incident to one object, then punishment may be imposed only as to one of the offenses committed. (*People v Beamon* (1973) 8 Cal.3d 625, 636-637; *People v. Saffle* (1992) 4 Cal.App.4th 434, 438.) The rule is easily stated but often difficult to apply. (3 Witkin and Epstein, Cal. Crim. Law (3d ed.) § 129, p. 192.)

Appellant had in his possession two checks stolen from Goodall's truck. There seems no basis for concluding appellant acquired the checks at different times or held them for more than one purpose. He intended to use both checks to defraud. We conclude the trial court erred in imposing a concurrent term on count 2, forgery, and the abstract of judgment is ordered amended to reflect execution of sentence on count 2 is stayed pending finality of the judgment and completion of sentence on count 1, at which

time the stay will become permanent. (See *People v. Lopez* (2004) 119 Cal.App.4th 132, 139.)

The abstract of judgment is ordered corrected to show execution of sentence on count 2 is stayed pending the completion of the sentence on count 1. In all other respects, the judgment is affirmed.

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BENKE, Acting P. J.

WE CONCUR:

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NARES, J.

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AARON, J.